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Convention on the Elimination
of All Forms of Discrimination
against Women

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 18 OF THE CONVENTION

Initial reports of States parties

MALAWI

V.88-27579

PART 1

(a) The Constitution of the Republic of Malawi does not contain an entrenched Bill of Rights, but recognises such rights in Section 2 of the Constitution, which in pertinent portions reads:

> "Section 2. - (1) ... the Government of the Republic shall be founded upon the following principles ...
>
> (iii) The Government and the people of Malawi shall continue to recognize the sanctity of the personal liberties enshrined in the United Nations Universal Declaration of Human Rights, and of adherence to the Law of Nations; ...
>
> (v) All persons regardless of colour, race or creed should enjoy equal rights and freedoms; ..."

In addition, Malawi has subscribed to a number of multilateral treaties related to the objects and purposes of the CEDAW. These include the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostituting of others, and the Convention for the Suppression of the Traffic in Women and Children.

The Malawi legal system does not follow a strict dualist or monist system when international law is being applied and a similar or different municipal law exists, on a particular subject. The courts in Malawi have not had occasion where a convention has been invoked, and so the question of direct applicability or applicability premised on the enactment of enabling legislation has not yet been decided.

On the economic front, in the agricultural sector, the Government has recognised the fact that women predominate in agricultural production either as the main growers in their own right or as providers of the family and/or as hired labour.

, Perhaps owing to inbuilt, unconscious, attitudinal biases, efforts aimed at improving agricultural production previously tended to be directed at men rather than women.

As a result very few women belonged to farmers' clubs. Furthermore, a 1982 National Survey of Agriculture indicated that men received more agricultural training than women.

In order to redress the situation, a Women's Section was created within the Ministry of Agriculture so that it could initiate and co-ordinate agricultural programmes for women farmers. The section is having its desired effect.

Women also have access to both seasonal and medium term credit either individually or in groups. (See Article 14(2)(g) of the Convention). This aids their farming ventures. Apart from food production, women are involved in various agro-based income-generating activities such as the keeping of stall feeders, broilers, layers and pigs.

More and more women are embarking on agricultural courses at Bunda College of Agriculture and at the Natural Resources College. As a result, the previously male-dominated sectors such as veterinary, land husbandry and plant breeding are accessible to women. The Government has consciously introduced policies aimed at removing this anomally.

Malawi's education policy seeks to train men and women to be constructive actors in the socio-economic development of the country. This policy pervades the other sectors of life. Thus, conscious efforts have been made to absorb more women in the legal system as well as in the Police enforcement machinery.

In February, 1981, the Malawi Government launched a functional adult literacy programme to combat adult illiteracy and the majority of the beneficiaries of this programme have been women.

PART II

Article 2

(a) The Malawi Constitution does not discriminate against people on the basis of sexual gender or other criteria. See Section 2(1)(v) of the Constitution (Supra). As regards the other Laws of Malawi, the Government has recognised that although these are not prima facie discriminatory against women, there is need to examine their practical application and ramifications on women. The principle has been recognised also that in protecting women's rights, attention ought not to be directed only at woman - specific legislation; other legislation, not directly connected with women, may actually adversely affect them. Consequently, the Government established the National Commission for Women in Development (NCWD), as a national central machinery under the UN Decade for Women. The Commission has in turn established various committees, including the Legal Committee, to assist it. The latter Committee meets periodically to examine the practical application of laws; note any evidence of discrimination, search for solutions and make recommendations to the National Commission which may initiate the reform process to redress the situation.

(b) No specific legislative measures have yet been taken. This can only be done after specific shortfalls have been identified. In this respect, the Legal Committee is continuously studying the laws and their application in pratice. It is a nascent institution but it has todate identified a number of problem-areas, which are being examined.

(c) Legal protection currently exists under the general legal structure, and this is being enhanced and complemented by the work of the NCWD.

(d) The Government does not engage in acts of discrimination against women and would not countenance such conduct on the part of its officers or others.

(e) In addition to the general legal framework, discrimination against women is constantly checked by political statements on the status of women. As an instance, the President has warned that anyone discriminating against his mbumba would face the brunt of the law.

(f) The Legal Committee, as at (b) above, is conducting this exercise. No specific measures have yet been taken.

(g) Theoretically, there are no laws which discriminate against women in Malawi. But as stated at (a) above, the Government has taken a further step, that of examining the practical application of laws to search for evidence of discrimination.

Save for the transient reservation on deep-rooted usages, which may take time to change, the Government would repeal any discriminatory national penal provisions.

Article 3

This obligation is being discharged.

Article 5

(a) This is linked to Malawi's reservation. The changes would have to be evolutionary. This process, it is hoped, will be hastened through mass education on the need to change customs grounded on the "woman's noble calling" fiction or similar stereotyping attitudes. In this regard, the Malawi Government has noted the declaration by the United Mexican States, and would like to state that although the gestation period of an evolutionary process cannot be determined beforehand, the Malawi Government will ensure that such process does not impair the fulfilment of her obligations or hinder the object and purpose of the Convention.

(b) This obligation has been discharged and will continue to be discharged. The under-five and ante-natal clinics, with reach-out programmes to cater for remote rural areas, and the Government decision to accord mothers three months leave with full pay, during confinement, demonstrate the Government's resolve in this regard. The private sector is being urged to follow the Government lead in this regard.

Article 6

In addition to the relevant Conventions, Malawi penal laws protect women from trafficking and the exploitation of their prostitution. (See Chapter XV Malawi Penal Code, Cap. 7:01).

The legal committee has already addressed the question of prostitution and has made some proposals to curb its incidence. This has mainly been in the context of bar owners who employ barmaids and operate what are effectively brothels, well within the context of lawful activities. The Committee has identified laxity in the enforcement of employment law and the Liquor Act as factors which have allowed this illegality to thrive.

Article 7

Sub-Articles (a) and (c) have been fully implemented and were in place well before Malawi acceded to this Convention.

In relation to sub-Article (b), the participation of women, just as men, is dependent on the possession of the relevant qualifications and attainment of the necessary levels of seniority in the Governmental heirarchy. The Government has recognised the almost universal privileged status enjoyed by men in these processes; in large part due to attitudinal biases, and has, in a broad context, tried to redress the situation by at least providing equal access to opportunities for advancement, and in order to realise this policy, by pursuing educational policies which confer the necessary advantages on women. This has been done through the allocation of special quotas in educational institutions (reverse discrimination), discouraging teen marriages and providing incentives for women to excel in their academic endeavours.

Article 8

The envisaged opportunity has been accorded to women in Malawi. They have participated, inter alia, at annual sessions of the General Assembly, Commonwealth Heads of Government Meetings, at the Organization of African Unity meetings, the Economic Commission

for Africa meetings, technical workshops (e.g. fertilizer - India) and so on. Such participation is premised on competence as it is in the work of international organizations.

Article 9

The question of acquisition (outside the context of marriage), change and retention of nationality currently does not discriminate on the basis of sexual gender. Although Malawi did not make a reservation in respect of this Article, the application of the law in this field is linked to national and private international law. The discharge of this obligation, which the Government considers positive, is therefore subject to amendments to the municipal law as well as a change in the choice of law rules.

Article 10

The Malawi Government has persistently followed and executed the ideals stipulated in paragraphs (a), (b), (c), (d), (e), (f) and (g).

In relation to paragraph (h) the Government initially met socio-cultural resistance to the concept of family planning, a subject traditionally perceived as taboo in the Malawi context. But with tact and persistence, the Government has achieved some marked success in the implementation of the family planning programme, which is called child spacing.

Article 11

(a) The right to work is a necessary right, but it cannot be assured, as it is dependent on a number of variables such as availability of employment, competition and so on. It is not an absolute right. Notwithstanding the foregoing, the Malawi Government has evolved programmes which seek to reduce the incidence of unemployment, such as technical programmes and vocational training via the Malawi Young Pioneers Movement. The Government is also trying to strengthen the informal sector by establishing financial institutions such as the Small Enterprise Development Organisation of Malawi which lends investment capital. The NCWD has also encouraged women to embark on their own businesses.

Article 11

, The bulk of the measures stipulated in Article 11(1)(a) to (f) and Article 11(2)(a) to (d), are either already covered under relevant International Labour Organization convetions; the Malawi Employment Act and related legislation, the Malawi Public Service Regulations, the common law and judicial precedent; the Factories Act (Safety in the work place) etc.

Comment

While desirable, some of the measures, such as those relating to social security and the provision of networks of child-care facilities, entail expenditure and presently, the Malawi economy is not capable of absorbing the attendant costs. These may be met as a long term objective, and it is hoped that the same concession to the developing countries such as Malawi, as granted under some Conventions of the International Labour Organization, can be granted by the Secretary-General.

Article 11 (3) states a principle which is recognised as necessary for the operation of law, particularly in common law based jurisdictions such as Malawi.

Article 12

(1) These measures have been implemented for a long time now. The only constraint is resources but the available resources are applied towards this goal without distinction as to sex.

(2) The same situation prevails as above. Because of Malawi's present level of economic development and status, it is not feasible or reasonable to expect the Government to provide adequate nutrition to mothers. In dire cases, this may be done but within the country's financial limits. Such direct Governmental interventions as are financially possible are complemented by a nutrition education programme, through the post-natal clinics and home-craft courses, which are offered gratis and are aimed at disseminating information on how to achieve adequate nutrition and related primary and corollary principles such as hygine.

Article 13

The rights sought to be protected under paragraphs (a) and (b) are among the problem areas already identified by the Legal Committee and in need of remedial action. The major obstacle to the enjoyment of family benefits is the phenomenon of "property-rushing" particularly by the relatives of a married deceased man. As regards paragraph (b), financial institutions have been known to demand male guarantors when the applicant or beneficiary is a woman.

These anomalies have been identified and remedial measures are being sought.

In the case of the right in (c), this has been fully realised and is encouraged.

Article 14

(1) The statement under Article 5 (b) supra, applies. The objectives hereunder, to the extent that finances have allowed, have been pursued through the provision of adequate facilities for the sustenance of life such as education, water, health, marketing and other services; the creation of rural growth centres (to avoid urban influxes and related problems) and, inter alia, through the introduction of the rural housing project which in 1987 earned Malawi the UN Rural Housing Award.

(2) The measures hereunder are mostly related to those in (1) above and the same situation prevails except for paragraph (c), for the same reason as stated in Article 12 (2) above.

Article 15

(1) From a pratical jurisprudential point of view and in fact, equality before the law has always been a cardinal principle of Malawi law.

(2) Identical capacity is accorded.

(3) No such contracts or private instruments have been identified, but the Malawi Government will discharge its obligation in the manner suggested.

(4) Freedom of movement and residence has never been restricted. As regards domicile, the same procedural difficulty as at Article 9 (above) prevails. The Legal Committee is examining this issue.

Article 16

1 (a) As per Malawi's reservation, in relation to polygamous unions, only men can enter into these. In relation to marriage in general, both men and women enjoy the same right to matrimony.

(b) The freedom of choice of a spouse exists, as well as that of consent. In the case of consent, the only obstacle is posed by the institution of arranged marriages or betrothal where the bride in some cases is obliged to marry the man of her parents' choice. This practice was common when migrant labour sorjourning was prevalent. With its decline, the practice has similarly reduced in incidence and is quickly being viewed with repugnance. This has been possible in part due to changed societal attitudes and the Government's education policy, outlined above.

(c) This is a problem area, and the difficulty, particularly for the local indigenous population, is compounded by the existence of a dual marriage regime: the Marriage Act, which follows English marriage laws, and the Customary Marriage, which is indogeneous and potentially allows polygamy and has no readily ascertainable rules as to invalidation and its dissolution. Thus, a double standard is created. The Legal Committee is considering this issue with a view to recommending reform.

(d) This measure is fully recognised save for lawfully sanctioned exceptions such as in the cases of incompetent mothers, on the grounds of minority of age or deranged mental status. No discrimination is practised against single-parent mothers save that at law, their children, if born out of lawful wedlock, are regarded as bastards or illegitimate before the law.

(e) The Malawi Government views the qualification of the freedom of choice on the size of family, by the reasonableness of that decision, as being of paramount importance. If this freedom were unbounded, it would conflict with the Government's child spacing/family planning objectives.

(f) These rights are recognised under Malawi law. The legal Committee has identified the economic disparity between men and women, which has a bearing when the question of which party can best secure the interests of the child, which is paramount, is being decided. It has been noted that the abstract concept of "best interests" invariably translates into "the more financially well positioned party," which in practice places the woman at a disadvantage.

(g) This right is recognised. Societal dictates show that in the majority of cases, a family name is rarely a matter of contention. In the rural setting, women are invariably known by their own clan name, mfunda or chiongo.

(h) This right is guaranteed.

2. This is one of the customs covered in the reservation and discussed in Article 16(1)(b). Presently, it is not feasible to charactirise the practice as legally invalid. The Government hopes to achieve this objective through evolution, education and the concommitant shift in attitudes.